

**Before the Appellate Tribunal for Electricity
(Appellate Jurisdiction)**

Review Petition No. 06 of 2015

In

Appeal No. 174 of 2012

Dated: 30th March, 2015

**Present: Hon'ble Mr. Rakesh Nath, Technical Member
Hon'ble Mr. Justice Surendra Kumar, Judicial Member**

In the matter of:

**Punjab State Electricity Regulatory Commission,
SCO No. 220-221, Sector-34-A,
Chandigarh- 160022.**

**... Review Petitioner/
Respondent**

Versus

**Punjab State Power Corporation Ltd.,
(Successor of Punjab State Electricity Board),
The Mal, Patiala-147001.**

... Respondent/Appellant

**Counsel for Review Petitioner
/Respondent:**

: Mr. Sakesh Kumar

**Counsel for the Respondent/
Appellant**

: Mr. Anand K. Ganesan

ORDER

Justice Surendra Kumar, Judicial Member

1. This Review Petition being No. 06 of 2005 in Appeal No.174 of 2012 has been filed on behalf of the respondent- Punjab State Electricity Regulatory Commission (State Commission) praying therein for reviewing the judgment dated 11.09.2014 passed by this

Appellate Tribunal in the said Appeal only to the extent it relates to employees cost, namely, Issue Nos. (i) & (ii).

2. We have heard Mr. Sakesh Kumar, learned counsel appearing for the Review Petitioner/State Commission and also heard Mr. Anand K. Ganesan, learned counsel appearing for the Respondent/Punjab State Power Corporation Ltd. and perused the judgment dated 11.09.20014 passed by this Tribunal in the aforesaid Appeal.

3. The only contention of the Review Petitioner in the said Review Petition is that this Appellate Tribunal in the aforesaid judgment dated 11.09.2014 in paragraph nos. 17, 18 & 40.1. held as under:-

“17. We are unable to accept the contention of Mr. Sakesh Kumar, learned counsel appearing for the respondent-State Commission to the effect that the earlier judgments of this Appellate Tribunal pronounced in Appeal No. 153 of 2007 and batch & 40 of 2010 since could not be cited before this Tribunal when this Tribunal was deciding Appeal No. 76 of 2011 and Appeal No. 07 of 2011 & batch regarding strict approach adopted by the State Commission having been approved by this Tribunal, hence the judgments passed in Appeal No. 76 of 2011 & in Appeal No. 07 of 2011 & batch, be treated as per incuriam. Since the strict approach of the State Commission was continuing year after year causing a number of problems and also causing injustice to the successor entities of the Punjab State Electricity Board, this Tribunal considered the pros and cons including the State Regulations, 2005 as subsequently amended in the year 2009 which were amended by the State Commission only after a mandamus issued by this Tribunal, the said judgments cannot be said to be per incuriam because all the aspects including relevant Regulations at the appropriate time have

been considered by this Appellate Tribunal in order to do justice to the rival parties and to maintain balance keeping in view the efficient and proper functioning of the generation, transmission, distribution and power trading in the State of Punjab.

18. We agree to the findings and law laid down by this Appellate Tribunal in its aforementioned judgment dated 02.03.2012 and re-affirmed in judgment dated 18.10.2012. We do not find any cogent or sufficient reasons to deviate from the said law laid down. The said judgments do not require any re-look at this stage by this Appellate Tribunal. Consequently, both the issues are decided in favour of the appellant and the findings recorded in the impugned order to the contrary are liable to be set aside since the said findings of the State Commission are perverse and suffer from error of law.

40. **Summary of Findings**

40.1. The State Commission has, in the impugned order, wrongly effected a reduction of 17.22% in the employees cost of the appellant on the ground that the employees cost of the appellant are high. The approach of the State Commission in reducing the employees cost to the extent of 17.22% on the ground that the employees cost of the appellant is higher and the appellant does not have control over its employees cost is erroneous and arbitrary. Further, the State Commission is not justified in applying the Wholesale Price Index (WPI) to increase in employees cost and dearness allowance. We do not approve this approach of the State Commission. We agree to the findings laid down by this Appellate Tribunal in its judgments dated 02.03.2012 & 18.10.2012 delivered in Appeal No. 76 of 2011 and Appeal No. 7, 46 & 122 of 2011 respectively. Thus, both the issues i.e. Issue Nos. (i) & (ii) are allowed by us directing the State Commission to re-examine both these issues in the light of our findings recorded earlier in the judgments dated 02.03.2012 and 18.10.2012 in Appeal No. 76 of 2011 and Appeal No. 7 of 2011 & batch.”

4. According to the Review Petitioner, this Appellate Tribunal has while recording Summary of Findings in Para No. 40.1 of the said judgment held that the State Commission has, in the impugned order, wrongly effected a reduction of 17.22% in the employees cost of the appellant Punjab State Power Corporation Ltd. (respondent herein) on the ground that the employees cost of the appellant are high. This Appellate Tribunal further held that the approach of the State Commission in reducing the employees cost to the extent of 17.22% on the ground that the employees cost of the appellant is higher and the appellant does not have control over its employees cost is erroneous and arbitrary and the State Commission is not justified in applying the Wholesale Price Index (WPI) to increase in employees cost and dearness allowance.

5. According to the learned counsel for the Review Petitioner/respondent, though the said judgment dated 11.09.2014 passed by this Tribunal in the aforesaid Appeal No. 174 of 2012, has been applied in toto and executed but the remarks, in the Summary of Findings to the effect that the State Commission is not justified in applying the Wholesale Price Index (WPI) to increase in employees cost and dearness allowance, is unwarranted because this Tribunal in its judgment while deciding Issue Nos. (i) & ii) in the said Appeal has not made any discussion or mention of the said remarks. The main prayer of the Review Petitioner is that the said remarks in para no. 40.01 of the Summary of Findings of the said Appeal, “further the State Commission is not justified in applying the Wholesale Price Index to increase in employees cost and dearness allowance” should be omitted or deleted because this would cause a great difficulty to the State Commission in future in implementing the State Commission’s Regulation in this behalf.

6. Contrary to the aforesaid submissions of the Review Petitioner, Mr. Anand K. Ganesan, learned counsel appearing for the Punjab State Power Corporation Ltd., who was appellant in the said Appeal before us, by raising many objections including preliminary objections has submitted that the present Review Petition is not maintainable because the State Commission (Review Petitioner herein) as the quasi-judicial authority and being the subordinate judiciary to this Tribunal, is seeking a review of the judgment in the said Appeal of this Tribunal and this is unknown to the judicial propriety and judicial hierarchy wherein a subordinate Court seeks the review of the judgment of the Appellate Court. For filing a Review Petition or an Appeal, the first ingredient is that such person should be an 'aggrieved person' and in the present case, the State Commission has failed to satisfy the requirement of being an 'aggrieved person' to be entitled to file the present Review Petition. The point of 'aggrieved person' has been decided in the case of Thammanna v. K. Veera Reddy, (1980) 4 SCC 62 and Shobha Suresh Jumani v. Appellate Tribunal, Forfeited Property, (2001) 5 SCC 755 in which the Hon'ble Supreme Court had considered the definition of the word 'aggrieved person' and also touched the point whether Regulatory Commission can file an Appeal and be termed as 'aggrieved person'.

7. Mr. Anand K. Ganesan, learned counsel for the respondent, during the course of his counter submissions, has elaborately submitted that this Appellate Tribunal in the aforesaid Appeal framed specific issue as to whether the Wholesale Price

Index is justified for increase in employee cost and dearness allowance and after framing the said issue, this Appellate Tribunal rendered the finding that the Wholesale Price Index is not correct. This is because the Wholesale Price Index is only for wholesale goods, whereas the employees cost including dearness allowance does not have any relation to the Wholesale Price Index but rather to the Consumer Price Index and other factors. This was a specific issue and ground raised by the appellant-PSPCL in the said Appeal has been decided by this Tribunal vide its judgment dated 11.09.2014. Since a specific issue was framed and finding given by this Appellate Tribunal on the said issue raised by the PSPCL/appellant, the matter is not for review proceedings. According to the well settled principle of law, the Review Petition cannot be an Appeal in disguise. Issues which have been considered and findings rendered cannot be the subject matter of review and re-hearing as held by the Hon'ble Supreme Court in the case of Parison Devi v Sumitri Devi, (1997) 8 SCC 715 and N. Anantha Reddy v. Anshu Kathuria (2013) 15 SCC 534.

8. According to Mr. Anand K. Ganesan, learned counsel for the appellant (respondent herein), the contention of the State Commission that the issue is contrary to the Regulations is also mis-conceived as the Regulations do not prohibit consideration of other factors for employee cost. Further, the Regulations provide for the power to amend, vary, relax etc. which has been exercised by the State Commission and also by this Appellate Tribunal in various cases. When such power

exists with the State Commission, the same can be exercised, particularly, when there is a direction of this Appellate Tribunal.

9. Mr. Ganesan, on the point of delay of 65 days in filing the present Review Petition has also submitted that this is more than double the time of delay after the expiry of the period of limitation of 30 days and the said delay has not been explained by the Review Petitioner and the said delay is required to be explained by the State Commission which was a party to the Appeal before this Appellate Tribunal.

10. We have considered the rival contentions of the parties on the Review Petition.

11. This Appellate Tribunal while dealing with the issue of Wholesale Price Index, framed the said issue and discussed the same at length and then decided the said issue. This Appellate Tribunal in its previous judgment also considered the Regulations and the Wholesale Price Index and held that actual costs need to be considered. We after considering the previous judgment and discussion on the said issue at length in our judgment dated 11.09.2014 in the said Appeal No. 174 of 2012, after referring to the decision of the State Commission on the Wholesale Price Index, directed that the actual amount spent, subject to prudence check, is to be considered. We do not find any error apparent on the face of our judgment dated

11.09.2014 warranting us to review our aforesaid judgment. For a moment, if we accept the contention of the Review Petitioner/State Commission that the finding in para no. 40.1. of our judgment dated 11.09.2014 is to be deleted, then it would result in the Issue No. (ii) framed being rendered without any finding and would also result in the previous decisions also being overruled/reversed. While disposing of the Issue Nos. (i) & (ii) in our judgment in Appeal No. 174 of 2012, we expressed our view in para nos. 17 & 18 of our judgment which we have already quoted above.

12. In view of the aforesaid discussion, we do not find any merits in the Review Petition, though the aforesaid Review Petition filed by the State Commission is apparently barred by the law of limitation but we have, apart from considering the point of limitation, decided the Review Petition on merits. There is no sufficient ground to review our judgment dated 11.09.2014 delivered in Appeal No. 174 of 2012 as the same is without merits and is liable to be dismissed. Accordingly, the instant Review Petition is dismissed. No order as to costs.

Pronounced in open Court on this 30th day of March, 2015.

(Justice Surendra Kumar)
Judicial Member

(Rakesh Nath)
Technical Member

√ **REPORTABLE/NON-REPORTABLE**
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